IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1743 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KINNARIBEN CHAMPAKLAL SHAH
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR B.S. SUPEHIA for Petitioner.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 26/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the decision of the competent authority in not giving compassionate appointment to the petitioner.

Shri Champaklal Manilal Shah, father of the petitioner, was in Government service and while in service, he died in an accident on 09.08.1971. On 21.04.1988, i.e. after about 17 years since the death of the aforesaid employee, mother of the petitioner applied for giving compassionate appointment to the petitioner. The said application for compassionate appointment was rejected by the respondents on 27.07.1988 and the same was communicated to the mother of the petitioner. The said order was not challenged by the petitioner or her mother. It seems that thereafter, after about 5 years from the rejection of the first application, another application was given by the mother of the petitioner on 10.02.1993. The respondent No.2, by his letter dated 17.02.1993 has informed the mother of the petitioner that the request to give appointment on compassionate ground to the petitioner had been turned down by the Government and the same had already been communicated to her by letter dated 27.7.1988. Thereafter, the petitioner has filed this petition on 02.03.1993.

By now, about 35 years have passed since the death of the father of the petitioner. It is also required to be noted that as back as 27.07.1988, mother of the petitioner was informed by the Department that her request for giving compassionate appointment to the present petitioner cannot be granted, and the same was accordingly rejected. Thereafter no attempt was

made for chall;enging the said decision and after waiting for about 5 years, another application was preferred by the mother of the petitioner on 10.02.1993 for giving benefit of compassionate appointment to the present petitioner. It seems that the said application was given only with a view to overcome the question of limitation as it can be contended that on rejection of the application, this petition is filed.

Compassionate appointment is a special appointment, which is dehors the regular recruitment rules. Such appointment is given with an object to see that family of the deceased employee may not be required to face economic crisis in view of the sudden death of the sole bread winner. In order to overcome the immediate crisis, provision for compassionate appointment is made so that the family of the deceased employee can sustain and overcome the financial crisis that occurred due to the sudden death of the employee. In the instant case, the mother of the petitioner applied for compassionate appointment for the petitioner after more than 17 years since the death of the employee. Mr. Supehia further submitted that since the present petitioner was minor and since the petitioner was hardly aged about one month at the time of the death of her father. Mother of the petitioner, therefore, gave an application on 21.04.88 when the petitioner became major. However, as pointed out earlier, the application was rejected on 27.07.88. No immediate steps were taken for challenging the said decision. Instead, mother of the petitioner waited for 5 years and fresh application was given on 10.02.93. It can, therefore, be safely presumed that the family of the deceased could sustain itself, and even till this time, the family of the deceased employee has sustained

itself for more than 35 years as the concerned employee died as back as in the year 1971. The claim of the petitioner now, therefore, is too stale to be adjudicated and no relief can be granted in view of the aforesaid facts. If the family of the deceased employee was in financial crisis, immediate steps could have been taken on the rejection of the first application, instead of waiting for 5 years. The application given in the year 1993, therefore, can be said to be an afterthought, only with a view to overcome the question of delay as it can be said that the petition is immediately filed challenging the subsequent decision.

Learned advocate Mr. Supehia has relied upon the judgment of the Division Bench in the case of GUJARAT MARITIME BOARD vs. K.N. KARMATA reported in 2004 (2) GLH 392 wherein this Court has taken a view that if the applicant was minor at the time of death of the employee and if application for compassionate appointment was given on attaining the age of 18 years, it cannot be said that the application was belated. Learned advocate Mr. Supehia has also relied on two unreported judgments of this Court: (1). Special Civil Application No. 13141 of 1993 decided on 14.6.1994 [Coram: S.M. Soni,J.], and (2). Special Civil Application No. 3206 of 1992 decided on 29.06.1994 [Coram: N.J. Pandya, J.]. Learned advocate for the petitioner submitted that even though there was delay of 17 and 13 years respectively, the Honourable Court has granted the prayer for compassionate appointment.

It is required to be noted that in the instant case, even though the first application was rejected on 27.07.88, no steps

were taken for almost 5 years for getting compassionate appointment, and there is no explanation in any manner in that behalf. It is not a case that on rejection of the application, proceedings have been initiated immediately by challenging the said decision.

Mr. N.D. Gohil, learned Assistant Government Pleader relied on the judgment in the case of **HARYANA STATE ELECTRICITY BOARD vs. HAKIM SINGH reported in (1997) 8 SCC 85**. In paragraph 13, the Honourable Supreme Court held as under:

> "13. This Court has considered the scope of the aforesaid circulars in Haryana SEB vs. Naresh Tanwar. In that case the widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate grounds. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in Umesh Kumar Nagpal v. State of Haryana, the other in Jagdish Prasad v. State of Bihar. In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by the deceased". In the latter decision, which also was rendered by a Bench of two Judges, it was observed that "the very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress, caused to the family by sudden demise of the earning member of the family". The learned Judge pointed out that if the claim of the dependent which was preferred long after the death of the deceased employee is to be countenanced it would amount to

> another mode of recruitment of the dependent of the deceased government servant “which cannot be encouraged, dehors the recruitment rules.”

Learned Assistant Government Pleader also relied on the judgment in the case of **STATE OF MANIPUR vs. MD RAJAODIN reported in (2003) 7 SCC 511**. In that case, the applicant, who was a minor at the time of death of the employee, made an application for compassionate appointment on attaining majority. In the said case, it was held by the Supreme Court that even if a reasonable period after the applicant attained majority is taken, the application given on 25.7.1997 was highly belated.

In the instant case, as pointed out earlier, at the time of giving the first application for compassionate appointment, about 17 years had already passed since the death of the employee. Even though the said application was rejected, no effective steps were taken for challenging the decision for about 5 years. The second application was made after five years. Considering the facts and circumstances of the case, the claim for compassionate appointment is now too stale a claim and cannot be considered as the petitioner himself has not approached the Court immediately after rejection of the application in 1988. In 1993 when the second application was made, more than 22 years had already passed since the death of the employee -father of the petitioner. Mr. Supehia has frankly pointed out that the petitioner has already been married. It is, therefore, presumed that she must be living with her husband and with in-laws. The claim for compassionate appointment at this stage, therefore, cannot be granted. The

family of the deceased employee has survived for more than 35 years now. As stated above, the object of compassionate appointment is to relieve unexpected, immediate hardship and distress caused by sudden demise of the earning member of the family of the deceased employees who die in harness. Therefore, after more than three decades of the death of the employee, compassionate appointment cannot be granted, and as observed by the Honourable Supreme Court, “it would amount to another mode of recruitment of the dependent of the deceased government servant which cannot be encouraged, dehors the recruitment rules.”

In the result, I do not find any merit in this petition. The petition is rejected. Rule is discharged. No order as to costs.

[P. B. MAJMUDAR, J.]

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